

# ORDINANCE 1587

## **AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO BUSINESS AND OCCUPATION TAXES AND ESTABLISHING A NEW SQUARE FOOTAGE TAX; AMENDING NBMC SECTION 5.04.050; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, RCW 35A.82.020 authorizes code cities to license businesses for the purpose of creating revenue; and

**WHEREAS**, the City of North Bend (“City”) has, since 1960, levied a business license tax (known as a business and occupation (B&O) tax) on persons engaging in business within the City, to fund, among other things, the costs of governmental services needed by such businesses; and

**WHEREAS**, some businesses operate warehouses, distribution centers, self-storage facilities, and/or light manufacturing and research uses within North Bend that require governmental services and that create general City service and transportation infrastructure impacts, but which are largely exempt from existing B&O taxes; and

**WHEREAS**, other Washington cities utilize different forms and combinations of B&O taxes, including a business tax based upon square footage of space used for primarily non-retail activities and services and support activities; and

**WHEREAS**, the City Council of the City of North Bend has determined that it is in the public interest to impose a similar tax on the square footage of warehouse/distribution, self-storage facilities, and/or light manufacturing and research space (“the square footage tax”); and

**WHEREAS**, the new square footage tax is intended to generate additional revenue to support City services and maintain, repair and operate the City’s existing transportation network in order to fairly allocate the cost to provide those services and to maintain that infrastructure to those business entities that contribute most to the use and degradation of City streets; and

**WHEREAS**, the City desires to tier the new square footage tax in order to allocate the obligation upon such businesses without overburdening owners and operators of large-scale spaces; and

**WHEREAS**, the City finds that vacant buildings contribute less to the use and degradation of City streets and therefore desires to exempt such buildings from the new square footage tax for up to two years of continued vacancy; and

**WHEREAS**, the City’s right to impose B&O taxes, including the square footage tax, is a permissible form of business licensing for revenue purposes and therefore is not a tax on property subject to the uniformity requirement in Article VII, Section 1 of the Washington state constitution (*Tacoma v. Fiberchem, Inc.*, 44 Wn.App 538 (1986)); and

**WHEREAS**, in 2003, the Legislature enacted Chapter 35.102 RCW, which required cities with local B&O taxes to implement a modified B&O tax model ordinance with certain mandatory provisions, and also permits cities to adopt their own provisions for tax exemptions, credits, and deductions; and

**WHEREAS**, on August, 5, 2003, the City adopted Ordinance No. 1192 adopting a modified B&O tax model ordinance as required by state law; and

**WHEREAS**, RCW 35.102.040(4) requires that cities deviating from the nonmandatory provisions of the model B&O tax ordinance make available to the public a description of such differences; and

**WHEREAS**, RCW 35.21.706 requires that ordinances imposing a new B&O tax shall be subject to specific referendum procedures described therein;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. NBMC 5.04.050 (Imposition of the tax – Tax or fee levied), Amended.** North Bend Municipal Code Section 5.04.050 (Imposition of the tax – Tax or fee levied) is hereby amended to read as follows:

**5.04.050 Imposition of the tax – Tax or fee levied.**

**A. Gross Receipts Tax.** Except as provided in subsection C of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the city, whether the person's office or place of business be within or without the city (the "gross receipts tax"). The gross receipts tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including byproducts, as the case may be, as follows:

1. Upon every person engaging within the city in business as an extractor, the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

2. Upon every person engaging within the city in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured within the city, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

3. Upon every person engaging within the city in the business of making sales at wholesale, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent.

4. Upon every person engaging within the city in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) processing for hire, as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent.

5. Upon every person engaging within the city in the business of making sales at retail, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent.

6. Upon every person engaging within the city in the business of sales of retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of two-tenths of one percent.

7. Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in the above subsections, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent. This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

B. Square Footage Tax. Except as provided in subsection C of this section, there is hereby levied upon and shall be collected from every person who leases, own, occupies, or otherwise maintains a structure within the city for purposes of engaging in business within the city, a tax for the act or privilege of engaging in business activities within the city (the "square footage tax"). The tax shall be in amounts to be determined by application of rates against square footage of warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space as follows:

1. Subject to the deductions established in subsection (B)(5) of this section, the amount of the tax due shall be equal to the sum of the number of square feet of floor area for each warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city multiplied by the rate(s) shown below per quarterly period for each calendar year:

a. The first 25,000 square feet shall be taxed at a rate of fifteen cents (\$0.15);

b. The second 25,000 square feet (25,001 thru 50,000 sq. ft.) shall be taxed at a rate of ten cents (\$0.10);

c. All square footage beyond 50,000 (50,001+ sq. ft.) shall be taxed at a rate of four cents (\$.04).

2. For purposes of this section, the following terms shall have the meanings set forth below:

a. "Industrial" means suitable for the manufacturing, processing, assembling, packaging or fabricating of previously prepared materials; manufacturing and processing of products predominately from extracted or raw materials; wrecking; storage activities; research and development activities; and warehousing.

b. "Light manufacturing" means a light industrial business where all processing, fabricating, assembly or disassembly of items takes place wholly within an enclosed building.

c. "Research" means businesses associated with research and development activities, high technology, software engineering, biotechnology, electronic components and board systems engineering, development, and application, and similar business activities.

d. "Self-storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence.

e. "Warehouse/Distribution" means a building or structure, or any part thereof, in which goods, wares, merchandise, commodities or equipment are stored, whether or not for compensation, for eventual distribution and/or furtherance of engaging in business.

3. For purposes of this section, the square footage shall be calculated to the nearest square foot and shall be computed by measuring all floor space, including mezzanines and lofts, to the inside finish of permanent outer building walls and shall include space used by columns and projections.

4. For any person with more than one location within the city, the floor space for all locations within the city shall be combined. When a person rents space to another person, the person occupying the rental space is responsible for the square footage tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

5. If, in any quarterly period, a person is subject to both the square footage tax imposed by this subsection (B) and the gross receipts tax imposed by subsection (A) of this section, then the amount of square footage tax due for the quarterly period shall be equal to only the portion of the square footage tax that exceeds the amount of the gross receipts tax due for the same quarterly period.

C. Exemption(s) and Threshold(s).

1. Gross receipts exemption. The gross receipts tax imposed in subsection (A) of this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, from all activities conducted within the city during

any calendar year are equal to or less than \$20,000, or are equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

2. Square footage exemption. The square footage tax imposed in subsection (B) of this section shall not apply to any warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city which is vacant during the entire quarterly reporting period in which the tax would otherwise be due; provided, that the taxpayer must claim the exemption by filing a certificate of vacancy during each quarterly period that the space remains vacant, and provided further that no person may claim this exemption for more than eight (8) consecutive quarterly periods.

3. Square footage threshold.

a. The square footage tax imposed in subsection (B) of this section shall not apply to any person whose total floor area of business space within the city is less than ten thousand (10,000) square feet of warehouse/distribution, industrial, and/or light manufacturing or research space; provided, however, that the threshold established in this subsection (C)(3) does not apply to self-storage facilities, and all square footage of self-storage facilities is subject to the square footage tax.

b. This is a threshold and not an exemption. If the square footage tax applies, it applies to all such business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

D. Rules. The director may promulgate rules and regulations regarding the manner, means, and method for calculating any tax imposed under this section.

**Section 2. Deviation from Model B&O Tax Ordinance.** Pursuant to RCW 35.102.040(4), the City shall make a description available to the public, both in written and electronic form, of the City's deviations from the nonmandatory provisions of the model B&O tax ordinance in a form substantially similar to Exhibit A, *North Bend B&O Tax Code's Deviations from Core Model Ordinance*, which is attached hereto and incorporated by this reference.

**Section 3. Referendum.** This ordinance is subject to the referendum procedure specified in RCW 35.21.706. A referendum petition may be filed within seven days of passage of this ordinance with the City Clerk, who is the filing officer of the City. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the City, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260(2).

Pursuant to RCW 35.21.706, the referendum procedure described herein shall be exclusive and shall supersede the procedures provided under Chapters 35.17 and 35A.11 RCW and all other statutory provisions for initiative or referendum which might otherwise apply.

**Section 4. Update of Taxes, Rates & Fees Schedule.** The Taxes, Rates & Fees Schedule, adopted by Ordinance 1084 and last amended by Ordinance 1573, effective as of January 1, 2016, is amended to reflect the taxes and rates as set forth in this Ordinance, and to reflect current codification of the City's B&O Tax Code, as follows:

<b>5.04</b>	<b>Business License and Business Occupation Tax</b>	
5.04.015(A)	Business License Registration Fee - Initial Application	\$35.00
5.04.015(B)	Business at two or more places	\$25.00 for each place of business
5.04.015(C)	Changes in the place of business	\$25.00
5.04.015(D)	Annual Business License Registration Fee (after first year)	\$25.00
5.04.015(E)	Additional Administrative Assessment after January 1st	25% of license fee plus interest at the rate of 12% per year
5.04.050(A)(1)	Extractor	gross sales x .002
5.04.050(A)(2)	Manufacturer	gross sales x .002
5.04.050(A)(3)	Wholesale	gross proceeds x .002
5.04.050(A)(4)	Printing and/or Publishing	gross proceeds x .002
5.04.050(A)(5)	Sales at Retail	gross proceeds x .002
5.04.050(A)(6)	Sales of Retail Services	gross proceeds x .002
5.04.050(A)(7)	All Others	gross income x .002
5.04.050(B)(1)(a)	Square Footage – first 25,000 sq. ft.	\$0.15/sq. ft. quarterly
5.04.050(B)(1)(b)	Square Footage – second 25,000 sq. ft. (25,001 thru 50,000 sq. ft.)	\$0.10/sq. ft. quarterly
5.04.050(B)(1)(c)	Square Footage – all square footage beyond 50,000 (50,001+ sq. ft.)	\$0.04/sq. ft. quarterly
5.04.060	Doing Business with the City	gross price x .002

*NOTE: Refer to NBMC Chapter 5.04 for allowable credits, exemptions, thresholds and deductions*

**Section 5. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such

decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 6. Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3<sup>rd</sup> DAY OF MAY, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: May 11, 2016

Effective: May 16, 2016

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**Susie Oppedal, City Clerk**

**EXHIBIT A:**  
**North Bend B&O Tax Code's Deviations from Core Model Ordinance**

CITATION TO B&O TAX CODE PROVISION	SUMMARY OF CHANGE FROM MODEL B&O TAX ORDINANCE	
	CITY CODE OMITS THE FOLLOWING DISCRETIONARY PROVISIONS PROVIDED IN MODEL ORDINANCE:	CITY CODE INCLUDES ADDITIONAL PROVISIONS (NOT PROVIDED IN MODEL ORDINANCE) AS FOLLOWS:
<b>NBMC 5.04.015</b> <b>Business license required</b>		Every person who engages in business activities within the City shall obtain a business license.
<b>NBMC 5.04.030</b> <b>Definitions</b>	Discretionary definitions for: Advance, reimbursement Agricultural product; farmer Artistic or cultural organization Competitive telephone service Consumer In this City; within this City Newspaper; magazine; periodical Non-profit corporation or non-profit organization Office; place of business Precious metal bullion or monetized bullion Processing for hire Product; byproduct Royalties Software; prewritten software; custom software; customization of canned software; master copies; retained rights Tuition fee	
<b>Model Provision .040</b>	Discretionary provision regarding sales and service by agents	
<b>NBMC 5.04.050(A)</b> <b>Gross receipts tax</b>		Tax rates for the following classifications: Extractor: .2% (.002) Manufacturer: .2% (.002) Wholesale: .2% (.002) Printing and Publishing: .2% (.002) Retail: .2% (.002) Retail Services: .2% (.002) Other: .2% (.002)
<b>NBMC 5.04.050(B)</b> <b>Square footage tax</b>		Quarterly square footage tax rate for warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space: \$0.15/sq. ft. for first 25,000 sq. ft. \$0.10/sq. ft. for second 25,000 sq. ft. \$0.04/sq. ft. for all square footage above 50,000 sq. ft.
<b>NBMC 5.04.050(C)</b> <b>Gross receipts exemption / Square footage threshold</b>		Square footage tax only applies to spaces 10,000 square feet or greater; provided that this threshold does not apply to self-storage facilities space (all self-storage facilities space is subject to square footage tax)



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	CITY CODE OMITS THE FOLLOWING DISCRETIONARY PROVISIONS PROVIDED IN MODEL ORDINANCE:	CITY CODE INCLUDES ADDITIONAL PROVISIONS (NOT PROVIDED IN MODEL ORDINANCE) AS FOLLOWS:
<b>NBMC 5.04.060</b> <b>Doing business with the city</b>		B&O tax applies to any person who accepts or executes contracts with the city, subject to allocation and apportionment under NBMC 5.04.077
<b>NBMC 5.04.090</b> <b>Exemptions</b>	Discretionary exemptions for: Non-profit organizations/corporations Healthcare International banking facilities Farmers/agriculture Athletic exhibitions Racing Ridesharing	
<b>NBMC 5.04.095</b> <b>City activities and city sponsored events exempted</b>		Exemption for city-sponsored business activities
<b>NBMC 5.04.100</b> <b>Deductions</b>	Discretionary deductions for: Non-profit organizations/corporations Public entities Interest on loans Repairs and maintenance Precious metal or monetized bullion Boarding homes Broadcasting	
<b>Model Provision .110</b>	Discretionary provision regarding application of tax to city business activities	
<b>NBMC 5.04.140</b> <b>Confidentiality, privilege and disclosure</b>		Tax information is confidential and privileged, subject to disclosure under RCW 82.32.330